

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21102

Application 31014 of **Lucasfilm Ltd.**
 P.O. Box 2009
 San Rafael, CA 94912-1800

filed on **January 21, 2000**, has been approved by the State Water Resources Control Board (SWRCB) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:	Tributary to:
<u>(1) Nicasio Creek</u>	<u>Lagunitas Creek thence</u>
<u></u>	<u>Tomales Bay</u>
<u>(2) & (3) Unnamed Stream</u>	<u>Nicasio Creek thence</u>
<u></u>	<u>Lagunitas Creek thence</u>
<u></u>	<u>Tomales Bay</u>

within the County of **Marin**

2. Location of point of diversion

By California Coordinate System in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
POD#1; North 571,700 feet and East 1,388,400 feet	SE ¼ of NW ¼	3	2N	7W	MD
POD#2; North 572,400 feet and East 1,388,200	NE ¼ of NW ¼	3	2N	7W	MD
POD #3; North 572,400 feet and East 1,388,400	NE ¼ of NW ¼	3	2N	7W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Fire Protection, Recreation, Wildlife Enhancement	SE ¼ of NW ¼	3	2N	7W	MD	
	NE ¼ of NW ¼	3	2N	7W	MD	

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 100 acre-feet per annum to be collected from December 1 of each year to April 30 of the succeeding year as follows: 94 acre-feet per annum in Reservoir #1, and 2 acre-feet per annum in Reservoir #2, and 4 acre-feet in Reservoir #3.
(0000005D)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
(0000005I)

The capacity of the Reservoirs #1, #2, and #3 covered under this permit shall not exceed 94 acre-feet, 2, acre-feet, and 4 acre-feet, respectively.
(0000005N)

6. After the initial filling of the storage reservoirs, permittee's right under this permit extends only to water necessary to keep the reservoirs full by replacing water lost by evaporation and seepage and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.
(00000040)

7. This permit is subject to the continuing authority of the State Water Resources Control Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized use. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing.
(00000042)

8. (Only for Reservoir #1) Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit

plans and specifications of the outlet pipe, or alternative facility, to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043A)

9. Within 6 months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:
- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
 - b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
 - c) A time schedule for the installation of these facilities.
 - d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
 - e) An operation and maintenance plan that will be used to maintain all facilities in good condition.

The Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by the permittee for ten years from the date of collection and made available to the Chief of the Division of Water Rights, upon request. Any non-compliance with the terms of the permit shall be reported by the permittee promptly to the Chief of the Division of Water Rights

Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0000070)

10. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Resources Control Board.

(0000100)

11. The right to use water for fire protection purposes authorized by this permit is limited to that quantity normally necessary for actual fire fighting and to maintain an adequate reserve for fire protection.

(0000116)
12. This permit is specifically subject to the prior rights of North Marin Water District under appropriation issued pursuant to Applications 25062 and 25079. Permittee shall not divert water to storage during the month of April of dry years while Nicasio Reservoir is spilling. A dry year is defined as a year in which the total precipitation that occurs from October 1 to April 1 is less than 28 inches, as measured at the Marin Municipal Water District's Kent precipitation gage. This term does not apply to water diverted to storage in the Owner's Reserve. Owner's Reserve shall include (a) a fire reserve, which shall include only water derived from surface water flowing from the watershed into the reservoir and only to the extent that such water can be stored in the reservoir up to the elevation of 640 feet; and (b) all water stored in the reservoir that has been supplied by wells or importation.
13. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than permittee would have used absent the appropriation authorized by this permit. Based on the information in the Division's files, riparian water has not been used on the place of use. Therefore, consistent with this term, permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Chief of the Division's approval, this information may be updated, and permittee may use water under basis of riparian on the authorized place of use, provided that permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by permittee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300b)
14. For the protection of resident rainbow trout (*Oncorhynchus mykiss*) and other fish, wildlife and public trust resources in Nicasio Creek downstream of Permittee's reservoirs, and upstream of Nicasio Reservoir, Permittee shall, during intital filling of the reservoirs, bypass at the Point of Diversion in the SE ¼ of the NW ¼ of Section 3, Township 2 North, Range 7 West, MDB&M a minimum flow of 1.35 cubic feet per second (606 gallons per minute) or the natural stream flow into the reservoirs, whichever is less, during the authorized storage season. Diversions under this permit shall not take place whenever the bypass flow is not met. Once initial filling of the Permittee's reservoirs has been accomplished, Permittee shall not be required, during the authorized storage season, to bypass the amounts designated above, but shall instead take all reasonable measures, consistent with order provisions of this permit, to maintain the reservoirs as full as

possible. During the period of May 1 through November 30, when diversion to storage is not authorized, Permittee shall bypass the total natural stream flow. The flow bypass provisions of this term do not apply to water pumped into the Permittee's reservoirs from groundwater or sources outside of the watersheds of the reservoirs.

15. If a program is implemented to restore anadromous salmonids above Nicasio Reservoir, the SWRCB, upon its own motion, or after petitions by National Marine Fisheries Service (NMFS) or California Department of Fish and Game (CDFG), shall conduct a hearing for the purpose of soliciting NMFS and CDFG comments for determining if additional permit or license terms and conditions are necessary to protect or enhance aquatic habitat upstream of Nicasio Reservoir.

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD
ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
(0000015)
- B. The amount authorized for appropriation may be reduced in the license if investigation warrants.
(0000006)
- C. Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
(0000010)
- D. Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
(0000011)
- E. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- F. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- G. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the

project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.


Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

MAY 22 2001

STATE WATER RESOURCES CONTROL BOARD


Harry M. Schueller, Chief
Division of Water Rights